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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह प्रालग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

MINISTRY OF LAW

(Legislative Department)

NOTIFICATION

New Delhi, the 19th April 1968

S.O. 1434.—The following Order made by the President is published for general information:

ORDER

Whereas a petition has been filed by Shri Bableshwar Hajisaheb Aminsaheb against Shri Damani Surajratan Fattechand, a Member of the House of the People alleging that the opposite party therein has become subject to the disqualifications under article 102 of the Constitution;

And whereas a reference has been made by the President to the Election Commission with reference to the said petition under article 103 of the Constitution as to whether the said Shri Damani Surajratan Fattechand has become subject to any of the disqualifications mentioned in article 102 of the Constitution;

And whereas the Election Commission has given its opinion that the opposite party has not become subject to any of the disqualifications (a copy of which is annexed hereto) on the aforesaid reference by the President under article 103;

Now, therefore, I, Zakir Husain, President of India, in exercise of the powers conferred on me under article 103 of the Constitution, do hereby decide, in accordance with the opinion of the Election Commission, that the said Shri Damani Surajratan Fattechand has not become subject to any of the disqualifications mentioned in clause (1) of article 102 after he became a Member of the House of the People.

RASHTRAPATI BHAVAN,

NEW DELHI,

13th April, 1968.

ZAKIR HUSAIN,
President of India.

ANNEXURE

ELECTION COMMISSION, INDIA

REFERENCE CASE NO. 5 OF 1967

[Under article 103 of the Constitution of India]
Shri Bableswar Hajisaheb Aminsaheb—Petitioner.

Versus

Shri Damani Surajratan Fattechand—Opposite Party.

PRESENT

Shri S. P. Sen-Verma Chief Election Commissioner of India

The 29th day of March 1968.

The petitioner, Shri Bableswar Hajisaheb Aminsaheb *in person*.

For the respondent—Shri R. M. Hajarnavis, Senior Advocate with Shri Balmukand R. Agarwala, Advocate.

OPINION

This is a case under article 103 of the Constitution on a reference made by the President of India. The allegations made by the petitioner in his petition filed before the President in his affidavit and in his oral arguments before me are that the respondent committed during the last general election held in February 1967, two corrupt practices and one offence. It is alleged that the respondent committed on the polling day the corrupt practice of free conveyance of voters to and from polling stations under section 123(5) which is also an electoral offence under section 133 of the Representation of the People Act, 1951. The other corrupt practice alleged to have been committed by the respondent is the incurring of election expenses beyond the authorised maximum limit of Rs. 25,000. It has been stated in the affidavit filed by the petitioner as well as in his oral arguments before me that the respondent, Shri Damani, spent about Rs. 25 lakhs from secret funds for corrupt practices at the time of the election which took place on the 15th February, 1967.

The respondent while completely denying all these allegations has raised a preliminary objection. It is contended that the present petition does not lie at all and is entirely incompetent as the two corrupt practices and the one electoral offence are alleged to have been committed, according to the petitioner's own case, during the last general election before the respondent was declared elected as a member of the House of the People. It is contended that the petitioner, if he had any grievance, should have filed an election petition under the relevant provisions of the Representation of the People Act, 1951.

I am of the opinion that this preliminary objection raised by the respondent must be upheld. On the petitioner's own case, as made out in his petition, affidavit and oral arguments, the two corrupt practices and the one electoral offence were committed by the respondent during the last general election of February 1967. If that be so, then it is well settled by the decisions of the Supreme Court that article 103 of the Constitution is applicable only in the case of a supervening or post-election disqualification and not in the case of any pre-election disqualification. In other words, the question, which may be raised under article 103 is as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in article 102(1). If a disqualification has been incurred before a person has become a member of either House of Parliament, then the remedy lies by means of an election petition under the relevant provisions of the Representation of the People Act read with article 329(b) of the Constitution, *vide* Saka Venkata Rao's case (1953) SCR 1144. This case has been approved and followed by the Supreme Court in the recent case of Shri Brundaban Nayak (1965) 3 SCR 53.

Apart from the decisions of the Supreme Court mentioned above, the language of article 103 clearly shows that the disqualification referred to therein must be a disqualification incurred after a person has become a member of Parliament. In other words, the disqualification must be engendered by the commission of a corrupt practice or an electoral offence or otherwise after a person has become a member of Parliament. The mention of the words 'a member' and 'has become subject' in article 103(1) clearly shows that the disqualifications must be supervening or post-election disqualifications. By way of comparison, it may be

pointed out that article 102(1), uses the expression 'a person'—a person shall be disqualified and not a member shall become subject to disqualification. The language of article 103(1) is *in pari materia* with the language of article 101(3). In that article also the word used is 'member' and not 'person'.

Then, under article 329(b) an election can be called in question only by an election petition and in no other way. Since the commission of a corrupt practice vitiates an election, it is one of the grounds under section 100 of the Representation of the People Act, 1951 on which an election can be called in question by an election petition. If such election petition is not filed, then the commission of such corrupt practice and any disqualification which it may entail cannot be agitated afterwards in view of the clear mandate of article 329. But if a disqualification is incurred by a *member of Parliament*, that is, by a person after he has become a member of Parliament, then that has nothing to do with the election or nomination whereby he has been elected or nominated as a member of Parliament and, therefore, such subsequent disqualification cannot be made a subject matter of an election petition under the Representation of the People Act, 1951. But though a disqualified member cannot continue as such member in view of article 101(3)(a), that article cannot be invoked, nor can it come into play unless and until it has been found by a competent authority that the member concerned has become subject to such disqualification. Now, who this competent authority should be and can be, Parliament, and it is well known, is extremely jealous of its own rights and privileges and the rights and privileges of its members. Therefore, the framers of the Constitution thought that the decision on a matter like this should not be left to an outside agency, however high that agency might be, and therefore, have provided by article 103 that if a question is raised as to whether a member of Parliament has become subject to any disqualifications, then it should be decided by one of the constituent organs of Parliament itself and by nobody else, namely, the President of India who under article 79 of the Constitution is one of the component units of Parliament. But article 103 again provides that in giving his decision the President shall be guided by the opinion of the Election Commission. There is good reason for this also. The Election Commission having been entrusted by the Constitution with the superintendence, direction and control of all elections and all matters relating thereto is an expert authority to decide questions of disqualifications of members of Parliament, not only that, the Election Commission has been made an independent and impartial body by the Constitution itself as the highest Court of the land, namely, the Supreme Court of India. These are the principles underlying article 103 of the Constitution.

Thus, both on authority and on principle, I am of the view that the petitioner has no *locus standi* to move the President under article 103 of the Constitution.

In view of my finding on the preliminary point it is not necessary for me to go into the merits of the case in detail. Except the uncorroborated statement of the petitioner, there is nothing on the record to prove that the respondent has exceeded the maximum amount of election expenses authorised by law. As stated already, the petitioner, in his affidavit as well as in his oral arguments before me, repeatedly alleged that the respondent had incurred an expenditure of Rs. 25 lakhs during the last general election but the petitioner instead of following the right course by means of filing an election petition has adopted the wrong path of moving the President under article 103. I know that the problems connected with election expenditure do not admit of an easy solution as one jurist (and not a politician or political writer) Prof. Julius Stone in his recent book "Social Dimensions of Law and Justice" (1966) has observed at page 318—"The problems of licit and illicit election expenses are unending." Be that as it may, in the instant case the petitioner is without any remedy. In the first place his petition is bound to fail on the preliminary ground. In the second place, his allegations he has utterly failed to prove.

The petitioner had, instead of filing an election petition under the Representation of the People Act, 1951, filed a writ petition before the Bombay High Court for declaring the election of the respondent void. But the Bombay High Court dismissed that petition. The petitioner also produced certified copies of two judgments in a criminal case to prove his allegations that two motor car drivers who had been employed by the respondent had been convicted by the criminal court. In both the cases the accused persons voluntarily pleaded guilty and each of them was convicted and sentenced to pay a fine of Rs. 25, in default to suffer simple imprisonment for 15 days. Assuming that these two motor car drivers were the agents of the respondent, even then the conviction of the agents or employees cannot by any stretch of imagination be regarded as the conviction of the principal or the master. There is no provision in criminal law or jurisprudence that if the agent or the servant is convicted and sentenced, then the

principal or the master shall also be convicted and sentenced even if the principal or the master has not been joined as a co-accused and even if no charge has been framed and proved against him. By no fiction of law can such a startling proposition be allowed or accepted. The case is of course entirely different where the principal or the master is joined as a co-accused and is convicted for the offence committed by the agent or the servant either as a conspirator or as an abettor or as an accessory but that is not the case of the petitioner in this case.

Even if it be assumed for the sake of argument and argument only that the respondent should be visited with the consequences (in this case disqualification for conviction) of his agents' conviction (again on the assumption that the convicted motor car drivers were his agents), even then that would have been of no avail to the petitioner because under section 8 of the Representation of the People Act, 1951, conviction for an offence under section 133 of that Act does not entail any disqualification for membership. But as stated earlier, these considerations of the case on merit are unnecessary in view of my finding on the preliminary objection that the petition does not lie under article 103 of the Constitution.

I must say that the petitioner is a frank man. He admitted at the end of the hearing that he could not file a regular election petition before the election court, namely, the Bombay High Court, because of the heavy amount of security deposit (Rs. 2,000) which is required to be filed with an election petition under section 117 of the Representation of the People Act, 1951. I have sympathy for the petitioner although that sympathy is hardly of any avail to him. I am accordingly of the opinion that the petition filed by the petitioner before the President of India should be dismissed and that it cannot be held that the respondent has become subject under article 103 of the Constitution to any of the disqualifications mentioned in clause (1) of article 102 after he became a member of the House of the People.

The Election Commission accordingly humbly advises the President of India that the petition filed before him by the petitioner, Shri Bableswar Hajisahab Aminsahab, should be dismissed as he has failed to prove that the opposite party, Shri Damani Surajratan Fattchand, has become, as a member of Parliament, subject to any of the disqualifications mentioned in article 102.

S. P. SEN-VARMA,
Chief Election Commissioner of India.
29-3-1968.

[No. F.7(13)/68-Leg.II.]

V. N. BHATIA, Secy.